



Federal Communications Commission  
Washington, D.C. 20554

January 3, 2024

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In Reply Refer to:  
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**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Mr. Darrick Servis, CFO  
Common Frequency, Inc.  
P.O. Box 4301  
Davis, CA 95617  
Sent via email: [darrick@commonfrequency.org](mailto:darrick@commonfrequency.org)

In re: **Common Frequency, Inc.**  
Station KCFH(FM), Two Harbors, CA  
Facility ID No. 175014  
Application File No. 0000155817

Dear Licensee:

We have before us the application (Application) of Common Frequency, Inc. (Licensee) for renewal of its license for Station KCFH(FM), Two Harbors, California (Station).<sup>1</sup> For the reasons set forth below, we grant the Application for a shortened renewal period, instead of a full term of eight years, pursuant to section 309(k)(2) of the Communications Act of 1934, as amended (Act).<sup>2</sup> **The Station's term will expire on January 3, 2025, and a renewal application will be due on or before September 1, 2024.**<sup>3</sup> **This short-term, one-year license renewal is granted on the condition that the Licensee, by March 1, 2024, comes into compliance with public inspection file requirements as specified by section 73.3527 of the Commission's rules (Rules) including, but not limited to, requirements concerning issue-responsive programming specified in section 73.3527(e)(8).**<sup>4</sup>

**Background.** Licensee acquired the Station through an assignment of license consummated on August 11, 2015.<sup>5</sup> The Station's license term, like that of most California radio stations, ended on December 1, 2021. On August 2, 2021, Licensee timely filed the Application seeking to renew the Station's license. The Application acknowledges that the Station was off air pursuant to Special Temporary Authority (STA) when acquired from the prior licensee<sup>6</sup> and also for four periods of almost 12

<sup>1</sup> Application File No. 0000155817.

<sup>2</sup> 47 U.S.C. § 309(k)(2).

<sup>3</sup> See 47 CFR § 73.3539(a) ("an application for renewal of license shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed").

<sup>4</sup> Section 73.3527(e)(8) requires noncommercial educational broadcast stations, every three months, to place in their public inspection files lists of programs that have provided the station's most significant treatment of community issues during the preceding three month period. See 47 CFR § 73.3527(e)(8).

<sup>5</sup> See Application File No. BALED-20150604ACD (consummated Aug. 11, 2015).

<sup>6</sup> The overall license term for California stations began on December 1, 2013. Licensee states that the assignor, Catalina Island Conservancy, kept the Station silent for two periods within assignor's portion of the license term: from January 9, 2014 to January 8, 2015, and from July 1, 2015 through the August 11, 2015 assignment to Licensee. Licensee resumed Station operations in June 2016, only to take it silent again two months later.

months each during Licensee's tenure: August 11, 2015 to June 5, 2016;<sup>7</sup> August 10, 2016 to August 10, 2017;<sup>8</sup> February 27, 2018 to February 16, 2019;<sup>9</sup> and October 28, 2019 to October 26, 2020.<sup>10</sup> Thus, the Station was silent for approximately 52% of its license term under Licensee. It has been on air without periods of silence from October 27, 2020 through present.

Licensee certifies in the Application that it has timely placed all required information in its public inspection file as required by section 73.3527 of the Rules. However, we have ascertained in our review of the Station's public file that the certification is inaccurate because information is missing.

**Discussion.** Silence instead of operation in accordance with a station's FCC authorization is a fundamental failure to serve a broadcast station's community of license, because a silent station offers that community no public service programming such as news, public affairs, weather information, and Emergency Alert System notifications. Moreover, brief periods of station operation sandwiched between prolonged periods of silence are of little value because the local audience is not accustomed to tuning into the station's frequency.<sup>11</sup>

The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.<sup>12</sup> That section provides that if, upon consideration of a station's license renewal application and related pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>13</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise

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<sup>7</sup> See Application File No. BLESTA-20150604ACE (granted to assignor Aug. 1, 2015); Notice of Resumption of Operations by assignee, dated Jun. 6, 2015).

<sup>8</sup> See Application File No. BLSTA-20160825AAC (granted Sept. 7, 2016); Notice of Resumption of Operations, dated Aug. 16, 2017.

<sup>9</sup> See Application File No. BLSTA-201802227ABI (granted Mar. 12, 2018); Notice of Resumption of Operations, dated Feb. 22, 2019.

<sup>10</sup> See Application File No. BLSTA-20191028AAF (granted Nov. 22, 2019); Notice of Resumption of Operations, dated Oct. 27, 2020.

<sup>11</sup> See *Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, para. 2 (2017).

<sup>12</sup> 47 U.S.C. § 309(k). See also 47 U.S.C. § 312(g). In addition to its enforcement of sections 309(k) and 312(g) of the Act, the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the public in several different contexts. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645, para. 7 (2011) (citing the Commission's “fundamental interest” in expediting new radio service and preventing “warehousing” of scarce spectrum); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23090-93, paras. 83-90 (1998), on reconsideration, 14 FCC Rcd 17525, 17539, paras. 35-36 (1999); *Lieberman Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

<sup>13</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read, as described, by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecomm. Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

permitted.”<sup>14</sup>

In 2001, the Commission cautioned “all licensees that . . . a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term.”<sup>15</sup> It also acknowledged the agency’s longstanding policy to encourage stations to resume broadcast operations when license renewal applications were pending. However, the Commission noted that section 309(k)(1) applies a “backwards-looking standard” that does not give any weight to efforts to return a station to full-time operation in the future.<sup>16</sup> The Commission held that denial of the renewal application of the station in question in the *Birach 2001 Order* would be fundamentally unfair because the Commission had not provided sufficient notice of the effect the section 309(k)(1) standard would have on silent stations.<sup>17</sup> Since the issuance of the *Birach 2001 Order*, licensees have been on notice as to how section 309(k)(1) applies to silent stations.

In this case, Licensee’s conduct has repeatedly fallen short of that which would warrant routine license renewal. Licensee’s stewardship of the Station fails to meet the public service commitment which licensees are expected to provide to their communities of license on a daily basis because the Station was silent for a significant portion of the license term.<sup>18</sup> Licensee’s full-time operation during the last ten months of the license term through present does not offset its failure to broadcast during the majority of its stewardship.<sup>19</sup>

Moreover, Licensee’s deficient public service commitment is reflected in a defective public inspection file. Among the items that each licensee must timely place in the file are quarterly lists of its most significant informational programming responsive to issues and problems of its community.<sup>20</sup> Licensee’s Application incorrectly certifies that it met this requirement. The Station’s file is missing issues/programs lists for many quarters during Licensee’s stewardship, including all quarters prior to

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<sup>14</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>15</sup> See *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach 2001 Order*).

<sup>16</sup> *Id.* at para. 12 (“[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.”).

<sup>17</sup> In the *Birach 2001 Order*, the station was silent for the entire period (approximately two and one-half years) in which the license renewal applicant (Birach) held the license. Section 312(g) of the Act took effect during that period, and Birach returned the station to operation before that provision would have applied. See 47 U.S.C. § 312(g). The Commission stated: “The fact that Birach resumed WDMV operations only when faced with the potential license cancellation is not lost on us. Although we have concluded that Birach is qualified to be a licensee and that grant of the renewal application was proper, it is equally clear to us that Birach’s conduct as a licensee upon acquiring WDMV fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis.” *Id.*, 16 FCC Rcd at 2021, para. 13.

<sup>18</sup> See *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n. 40 (MB 2014) (Commission considers the licensee’s performance since the beginning of its most recent license term, but performance during the pendency of a renewal application is given less weight).

<sup>19</sup> See *Birach 2001 Order*, 16 FCC Rcd at 5020, para 12.

<sup>20</sup> See 47 CFR § 73.3527(e)(8).

2019.<sup>21</sup> Of the lists that are present, most were not timely and some were reconstructed almost two years past their due dates.<sup>22</sup> Lists for Third Quarter 2021 through Fourth Quarter 2022 (the most recent submissions)<sup>23</sup> appear to reflect programming aired only on two other stations operated by the same Licensee.<sup>24</sup> Lists for the immediately preceding period, Third Quarter 2019 through Second Quarter 2021, pertain to the correct Station but each list describes just two segments of a single, nationwide syndicated program. Although there is insufficient evidence to support a finding that Licensee's false certification of public file compliance is due to any deliberate misrepresentation or lack of candor, the file's deficiencies clearly demonstrate gross negligence and make it impossible for us to determine that the Station met its obligation to provide public service programming for its community, even during the portion of the license term it was on air.<sup>25</sup> Moreover, we are concerned that Licensee certified it had met the requirements when it clearly had not.

On the facts presented here, we conclude that a conditional short-term license renewal for the Station is the appropriate sanction. Although the Licensee did seek and obtain Commission authorization for the periods of silence, we cannot find that the Station served the public interest, convenience and necessity during the license term due to the extended periods of non-operation. Further, because the Station did not comply fully with public inspection file requirements it is uncertain, even for periods in which the Station did operate, whether the Station met its primary obligation to air informational programming responsive to issues and problems of the community.

Accordingly, pursuant to section 309(k)(2) of the Act, we will grant the Station a short-term license renewal, limited to a period of one year from the date of this letter and conditioned upon its coming into compliance with public file requirements.<sup>26</sup> Additionally, we admonish Licensee for its

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<sup>21</sup> The file contains no issues/programs list for Fourth Quarter 2015 through Second Quarter 2019. The Station was silent for large portions of these periods but should have identified its most significant issue responsive programming for the periods it was on air. For any quarter in which it was entirely silent, Licensee should have stated that it aired no issue responsive programming that period due to silence.

<sup>22</sup> Issues/programs lists are due by the 10<sup>th</sup> of the month following end of a quarter. 47 CFR § 73.3527(e)(8). Licensee submitted its lists in two batches, one in June 2021 and the other in May 2023, with each batch covering five or more quarters. Late reconstruction of issues/programs lists, when necessary, does not constitute compliance.

<sup>23</sup> The file contains no lists for First Quarter 2023 through present.

<sup>24</sup> For the periods Third Quarter 2021 through Fourth Quarter 2022, the title of the electronic document uploaded to the Station's public file, e.g., "Log Issue 3rd Quarter 2022 - KHCF-KZCF-KQCF-KCFH-KDXA" names the Station as one among five. However, the text of the document itself specifies that the programs named therein aired only on two stations: KHCF, Morgan Hill, CA and KZCF, Atwater, CA. Because the lists do not state whether all informational programming aired on the Morgan Hill and Atwater stations also aired on KCFH, the filings are not helpful in evaluating the extent to which the Station aired programming to meet the needs of Two Harbors. Further, the use of an identical, late-filed list for five stations provides no reasonable certainty that Licensee has considered the particular problems facing Two Harbors and the programming that would best address those issues.

<sup>25</sup> We further note that the Station's file does not identify any donors supporting specific programs, which would be required pursuant to 47 CFR § 73.3527(e)(9) if the Station had any such donors. Licensee should, by March 1, 2024, determine whether it has such donors and, if so, identify them in its public file.

<sup>26</sup> See, e.g., *South Seas Broad., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 6474 (MB 2008) (two-year renewal granted, NAL issued, for willfully and repeatedly violating 47 CFR § 73.1350 by engaging in operation of the station at an unauthorized site and willfully and repeatedly violating 47 CFR § 73.1740 by leaving the station silent without the proper authorization).

violation of the Rules by failing to timely place issue-programs lists in its public inspection file and by certifying incorrectly that it had timely and fully met public file requirements.

This short-term, one-year license renewal is granted **on the condition that the Licensee by March 1, 2024 bring its online public inspection file into full compliance with section 73.3527 of the Commission's rules.**<sup>27</sup> With respect to issues/program lists, Licensee should reconstruct and place in the file lists for First Quarter 2023 through Third Quarters 2023. Licensee must timely file an issues/program list for Fourth Quarter 2023 by January 10, 2024 and timely file such lists for all quarters thereafter to demonstrate that KCFH(FM) has presented significant informational programming each quarter responsive to issues it has determined to be important to Two Harbors, California. With respect to donor lists, Licensee must by March 1, 2024 place in its public file lists of donors supporting specific programs and, if there are none, shall so state. This limited, conditional renewal period will afford the Commission an opportunity to review the Station's public service performance, as well as compliance with the Act and the Commission's rules, and to take whatever corrective actions, if any, that may be warranted at that time.

**Conclusion.** Accordingly, for the reasons set forth above, **IT IS ORDERED THAT** the license renewal application (Application File No. 0000155817) filed by Common Frequency, Inc., for Station KCFH(FM), Two Harbors, California, IS GRANTED pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,<sup>28</sup> for a license term of one year from the date of this letter,<sup>29</sup> under the condition that the Licensee brings its online public inspection file into full compliance with the requirements specified in 47 CFR § 73.3527 by March 1, 2024.

**IT IS FURTHER ORDERED** that Common Frequency, Inc. **IS ADMONISHED** for its inaccurate certification in the license renewal application to have been in compliance with section 73.3527 of the Commission's rules.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

cc (via electronic mail):  
Todd Urick (todd@commonfrequency.org)  
(Technical Representative for Common Frequency, Inc.)

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<sup>27</sup> Under section 1.110, Licensee may challenge this conditional grant of its Application within 30 days of the date of this letter by filing a written request with the Commission rejecting the grant as made. See 47 CFR § 1.110.

<sup>28</sup> 47 U.S.C. § 309(k)(2).

<sup>29</sup> The date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System (LMS).